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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Communications Assistance
for Law Enforcement Act

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CC Docket No. 97-213

COMMENTS OF SOUTHERN COMMUNICATIONS SERVICES, INC.

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Dated: December 12, 1997

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In this proceeding, the Commission seeks comment on which communications entities are required to comply with the Communications Assistance for Law Enforcement Act of 1994 (CALEA), and which entities are exempted. The Commission also seeks comment on: (1) reporting obligations to the Federal Communications Commission (FCC); (2) the cost of compliance and factors to consider in reimbursing certain costs; (3) potential liability for unlawful wiretaps by employees; and (4) implementation of specific security and recordkeeping procedures.

I. INTRODUCTION

1. Southern Company, an electric public utility holding company, operates through

its subsidiary, Southern Communications Services, Inc. (Southern) a wide-area 800 MHz Specialized Mobile Radio (SMR) system throughout its regional service area. Southern has invested millions of dollars in this state-of-the-art digital SMR system which provides enhanced dispatch communications for internal use by its five operating companies. For example, this system transmits local dispatch communications to service crews who respond to calls concerning substations and power lines in routine and emergency situations. Southern also provides SMR service to tens of thousands of external customers, the bulk of which are state and local governments, utilities, industrial and commercial users who need the enhanced dispatch, two-way voice, and data transmission capabilities of Southern's wide-area SMR system. The Southern 800 MHz SMR system provides service for these customers in rural and urban areas corresponding with its utility system operations.

II. COMMENTS

A. The FCC Has Authority Under CALEA To Exempt Dispatch-Oriented Specialized Mobile Radio Providers

2. Although CALEA is intended to have broad application across the telecommunications industry, there is statutory support for exempting SMR carriers that provide primarily dispatch services. CALEA applies to “telecommunications carriers,” which it defines as any “entity engaged in the transmission or switching of wire or electronic communications as

a common carrier for hire.”¹ That term includes any entity “providing commercial mobile service ... as defined in section 332(d) of the Communications Act of 1934.”² That same section, however, explicitly gives the FCC discretion to exclude from that definition “any class or category of telecommunications carriers.”³ Southern is in a “class or category of telecommunications carriers” which the FCC should use its power to exempt from compliance with CALEA based on the type of service it provides, the clients it serves, and the potential burden on Southern’s operations of the costs of complying with CALEA.

B. Dispatch-Oriented SMR Systems Should Be Regulated Differently From Other CMRS Providers For Purposes Of CALEA

3. Southern’s communications system represents a specialized subset of systems within the broad regulatory category of Commercial Mobile Radio Service (CMRS) and should be recognized as such for purposes of CALEA. It was only relatively recently that Congress mandated CMRS as an umbrella term encompassing a range of radio services such as SMR, cellular, and PCS, which were formerly regulated under very distinct regimes. Today, wide-area SMR service is deemed substantially similar to other CMRS services in regard to general

¹ 47 U.S.C. § 1001(8).

² *Id.* The Communications Act establishes a three-part test for determining whether a carrier will be classified as commercial. An entity is deemed a commercial mobile service provider if it offers mobile service for profit and makes interconnected service available to the public. 47 U.S.C. § 332(d).

³ 47 U.S.C. § 1001(8)(emphasis added).

regulations promulgated by the Commission under the Telecommunications Act.⁴

4. Dispatch-oriented SMR systems, however, have unique aspects and should be distinguished from PCS and cellular for purposes of CALEA. For example, the House Report accompanying CALEA is full of specific references to the FBI's concerns with cellular and PCS systems, but is silent on dispatch-oriented SMR systems.⁵ The Commission and the Justice Department both have previously recognized that dispatch services are not typical of other CMRS systems; specifically, they have found that dispatch constitutes a distinct market from mobile phone services.⁶

C. Exempting Dispatch-Oriented SMR Systems Will Not Undermine Law Enforcement Goals

5. Dispatch-oriented SMR systems, such as Southern's, are unlikely conduits for criminal activity conducted by anonymous individual users because of the specialized market they serve. As an initial matter, much of Southern's SMR system serves approximately 10,800 internal utility users. In contrast to cellular and PCS systems, Southern's tens of thousands of external customers are not individual users drawn from the public at large seeking primarily

⁴ CRMS Third Report & Order, ¶¶ 10-14.

⁵ According to the FBI in 1994, of almost two hundred incidents where the FBI was prevented from successfully intercepting a communication due to technology, one-third of those were cellular related, with another one-third linked to custom calling features. H.R. Rep. 103-827, 103d Cong. 2d Sess., pt. 1 (1994).

⁶ In Re Applications of Pittencrief Communications and Nextel Communications for Consent to Transfer Control of Pittencrieff Communications, Inc. and its Subsidiaries, Memorandum Opinion and Order, Released October 24, 1997, CWD No. 97-22.

interconnection services. Southern's commercial customers instead are seeking primarily dispatch services and consist mainly of: (1) public safety entities, such as emergency management agencies;⁷ (2) federal, state, and local governmental entities; (3) public utilities, including nuclear power plants; and (4) businesses. Southern's wide-area SMR system is perfectly tailored to these types of users because it offers highly reliable dispatch service during storms and other natural disasters when other communications systems might fail.

III. CONCLUSION

6. Southern supports the Commission's implementation of CALEA and will continue to make every effort to cooperate with authorized law enforcement intercepts. Southern asks the Commission to consider, however, the unique characteristics of dispatch-oriented SMR providers, such as Southern, before imposing on them an affirmative obligation to modify its communications system. The Commission should not craft overly inclusive regulations which would require all CMRS carriers to comply with CALEA without weighing the cost of compliance to SMR providers against the likelihood of law enforcement requiring assistance from such carriers.

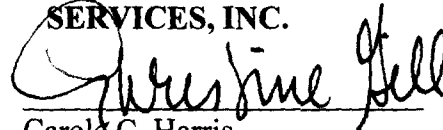
7. A reassessment of these criteria is essential to secure the continued viability of SMR providers such as Southern and serves important public interests. An approach which mitigates unnecessary costs to SMR providers will allow them the flexibility to adapt to new

⁷ For example, the Alabama Emergency Management Association is among its many customers.

technologies and markets, thereby contributing to spectrum efficiency and market competition. Exempting Southern will not impede law enforcement efforts both because of the unlikely event that its system would carry criminal communications, and because Southern remains committed to cooperating with authorized wiretaps within the technical parameters of its existing communications network.

Respectfully submitted,

**SOUTHERN COMMUNICATIONS
SERVICES, INC.**

A handwritten signature in black ink, appearing to read "Christine M. Gill", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 1997, I caused true and correct copies of the COMMENTS OF SOUTHERN COMMUNICATIONS SERVICES, INC. to be served via hand delivery on:

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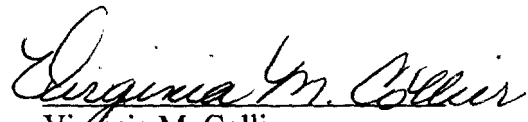
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